

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

SAMUEL WILLIAMS, derivatively on behalf of
VANDA PHARMACEUTICALS INC.,

Plaintiff,

v.

MIHAEL H. POLYMEROPOULOS, JAMES P.
KELLY, GIAN PIERO REVERBERI, H.
THOMAS WATKINS, MICHAEL F. COLA,
KENNETH M. BATE, RICHARD W. DUGAN,
VINCENT J. MILANO, and HOWARD H.
PIEN,

Defendants,

and

VANDA PHARMACEUTICALS INC.,

Nominal Defendant.

Case No. 1:19-cv-04293

MICHAEL BAVARO, derivatively on behalf of
VANDA PHARMACEUTICALS, INC.,

Plaintiff,

v.

MIHAEL H. POLYMEROPOULOS, M.D.,
JAMES KELLY, GIAN PIERO REVERBERI,
H. THOMAS WATKINS, MICHAEL F. COLA,
RICHARD W. DUGAN, VINCENT J.
MILANO, and KENNETH BATE,

Defendants,

and

VANDA PHARMACEUTICALS, INC.,

Nominal Defendant.

Case No. 1:20-cv-01584

**STIPULATION AND [PROPOSED] ORDER CONSOLIDATING
RELATED ACTIONS AND APPOINTING LEAD COUNSEL**

Plaintiffs Samuel Williams (“Williams”) and Michael Bavaro (“Bavaro” and, together with Williams, “Plaintiffs”), Nominal Defendant Vanda Pharmaceuticals Inc. (“Vanda”), and Defendants Michael H. Polymeropoulos, M.D., James Kelly, Gian Piero Reverberi, H. Thomas Watkins, Michael F. Cola, Richard W. Dugan, Vincent J. Milano, Kenneth M. Bate, and Howard H. Pien (collectively, “Defendants” and, with both Vanda and Plaintiffs, the “Parties”), stipulate as follows:

WHEREAS, on July 25, 2019, Williams filed a Verified Shareholder Derivative Complaint in the United States District Court for the Eastern District of New York against Defendants, seeking to remedy, derivatively on behalf of Vanda, alleged violations of Sections 10(b) and 14(a) of the Securities Exchange Act of 1934 (and SEC Rules 10b-5 and 14a-9), breaches of fiduciary duty, gross mismanagement, corporate waste, and unjust enrichment (the “*Williams* Action”);

WHEREAS, on September 11, 2019, Bavaro filed a Verified Shareholder Derivative Complaint in the United States District Court for the District of Delaware against Defendants, seeking to remedy, derivatively on behalf of Vanda, alleged violations of Section 14(a) of the Securities Exchange Act of 1934, breaches of fiduciary duty, corporate waste, and unjust enrichment (the “*Bavaro* Action”);

WHEREAS, on October 31, 2019, Defendants and Vanda filed a motion in the *Bavaro* Action seeking to transfer the *Bavaro* Action from the District of Delaware to the Eastern District of New York, where the *Williams* Action is pending or, in the alternative, to stay the *Bavaro* action pending resolution of a related putative class action before this Court styled *Gordon v. Vanda Pharmaceuticals Inc.*, Case No. 19-cv-01108-FB-LB (E.D.N.Y.);

WHEREAS, on February 18, 2020, following briefing, the court in the *Bavaro* Action denied the motion to transfer without prejudice but stayed the *Bavaro* Action pending the resolution of the *Williams* Action;

WHEREAS, on March 17, 2020, Williams, Defendants, and Vanda notified this Court that the parties in the *Bavaro* Action intended to file a stipulation and proposed order in the United States Court for the District of Delaware seeking to transfer the *Bavaro* Action to this Court;

WHEREAS, on March 18, 2020, this Court ordered, among other things, that, if the *Bavaro* Action were transferred to this Court, then counsel shall make an application to have the *Bavaro* Action and the *Williams* Action consolidated for all purposes and that, after those actions are consolidated, counsel for Defendants and Vanda shall request a pre-motion conference to determine whether a pre-motion conference is needed or whether counsel can submit a revised modified briefing schedule as to Defendants and Vanda's motion to dismiss the new consolidated operative complaint (the "March 18 Order");

WHEREAS, on March 27, 2020, the parties to the *Bavaro* Action filed a stipulation and proposed order that contemplated transfer of that action to the Eastern District of New York and subsequent consolidation with the *Williams* Action;

WHEREAS, also on March 27, 2020, the *Bavaro* Action was transferred to the Eastern District of New York; and

WHEREAS, in accordance with the March 18 Order, and given that the *Williams* Action and the *Bavaro* Action involve many common issues of law and fact, the Parties all support consolidating the *Williams* Action and *Bavaro* Action;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, subject to the Court's approval, as follows:

1. The *Williams* Action and the *Bavaro* Action are hereby consolidated for all purposes, including pre-trial proceedings and trial, pursuant to Federal Rule of Civil Procedure 42(a) under Case No. 19-cv-04293 (the “Consolidated Action”).

2. All new papers filed in the Consolidated Action, or in any separate action included herein, must bear the following caption:

IN RE VANDA PHARMACEUTICALS INC. DERIVATIVE LITIGATION

Case No. 19-cv-04293

3. All papers filed in connection with the Consolidated Action will be maintained in one file under Case No. 19-cv-04293.

4. The law firms of Levi & Korsinsky, LLP and Bragar Eagel & Squire, P.C. shall serve as Co-Lead Counsel for Plaintiffs in the Consolidated Action.

5. Plaintiffs’ Co-Lead Counsel shall have the sole authority to speak for Plaintiffs in all matters regarding pre-trial procedure, trial, and settlement negotiations, and shall make all work assignments in such manner as to facilitate the orderly and efficient prosecution of the Consolidated Action and to avoid duplicative or unproductive effort.

6. Co-Lead Counsel shall be responsible for coordinating all activities and appearances on behalf of Plaintiffs. No motion, request for discovery, or other pre-trial or trial proceedings will be initiated or filed by Plaintiffs except through Co-Lead Counsel.

7. Defendants and Vanda’s counsel may rely upon all agreements made with Co-Lead Counsel, or other duly authorized representative of Co-Lead Counsel, and such agreements shall be binding on all Plaintiffs.

8. This Order shall apply to each derivative case arising out of the same, or substantially the same, transactions or events as the Consolidated Action, which is subsequently

filed in, remanded to, reassigned to, or transferred to this Court. When a derivative case that properly belongs as part of *In re Vanda Pharmaceuticals Inc. Derivative Litigation*, Case No. 19-cv-04293, is hereafter filed in this Court, reassigned to this Court, or transferred to this Court from another court, this Court requests the assistance of counsel in calling to the attention of the Clerk of the Court the filing, reassignment, or transfer of any case that might properly be consolidated as part of the Consolidated Action, and counsel are to assist in assuring that counsel in subsequent actions receive notice of this Order.

9. On or before April 24, 2020, Plaintiffs shall file a consolidated complaint in the Consolidated Action.

10. On or before June 8, 2020, Defendants and Vanda shall file a letter requesting a pre-motion conference regarding their anticipated motion to dismiss the consolidated complaint.

11. Per Rule 2.A of this Court's Individual Motion Practices and Rules, Plaintiffs shall have until seven days after service of Defendants and Vanda's pre-motion letter to file a letter response.

12. Defendants and Vanda need not answer, move, or otherwise respond to the consolidated complaint until a further schedule has been entered by this Court following the pre-motion letter process described above. Nothing herein shall constitute a waiver or abrogation of, or in any manner prejudice, any defenses that Defendants or Vanda may assert, or claims that Plaintiffs may assert, in the Consolidated Action or any of the above-referenced individual actions.

Dated: April 1, 2020

LEVY & KORSINSKY, LLP

By: /s Gregory Mark Nespole

Gregory Mark Nespole

Daniel Tepper

55 Broadway, 10th Floor

New York, New York 10006

Telephone: (212) 363-7500

Counsel for Plaintiff Williams

Dated: April 1, 2020

BRAGAR EAGEL & SQUIRE, P.C.

By: /s W. Scott Holleman

W. Scott Holleman

Lawrence P. Eagel

Garam Choe

885 3rd Avenue, Suite 3040

New York, New York 10022

Telephone: (212) 355- 4648

HYNES & HERNANDEZ, LLC

Michael J. Hynes

Ligaya T. Hernandez

101 Lindenwood Drive, Suite 225

Malvern, Pennsylvania 19355

Telephone: (484) 875-3116

Counsel for Plaintiff Bavaro

Dated: April 1, 2020

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP

By: /s/ Audra J. Soloway

Audra J. Soloway

Daniel J. Kramer

Brad D. Feldman

1285 Avenue of the Americas

New York, New York 10019-6064

Telephone: (212) 373-3000

*Counsel for Defendants &
Nominal Defendant*

SO ORDERED, this ____ day of _____, 2020

The Honorable Frederick Block
United States District Judge